

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

AUG 28 1986

SECRETARY OF LABOR, .	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 86-28-M
Petitioner	:	A.C. No. 31-00052-05501 J2K
	:	
v.	:	Pomona Mine & Mill
	:	
YATES CONSTRUCTION CO.,	:	
INC. ,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On August 22, 1986, the parties filed a Joint Motion to Approve Settlement and to Dismiss this proceeding. A similar motion was filed in the case of Secretary v. Martin Marietta Aggregates, Docket No. SE 86-31-M, with which this proceeding was consolidated by order issued April 18, 1986.

This proceeding involves three alleged violations, one originally assessed at \$2000 and charging a violation of 30 C.F.R. § 56.3005, the others each assessed at \$98. By this settlement agreement, the parties propose to amend citation 2385988 charging a violation of § 56.3005 to read as follows:

Respondent's employee operating at a mine site on or about April 15, 1985 wrongfully worked between equipment and the pit wall in violation of 30 C.F.R. § 56.3012.

The parties represent, and I accept the representation, that the amended citation alleges a violation of the standard more directly applicable to the circumstances of this case. The settlement agreement proposes that Respondent pay the sum of \$1000 for the violation charged in the amended citation, and the assessed amount, \$98 for each of the other alleged violations.

The violation charged in citation 2385988 is serious, since it caused or contributed to a fatal accident. Respondent states that the violation resulted from an employee violating a previously communicated work rule, and the Secretary does not contest this assertion. Respondent has no prior history of inspection under the Act. It is a small operator.